

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 624 of 1990

M/s Ladda and Company
its proprietor Mohanal
Pannalal Ladha, adult trader
resident of Daund, District Pune..Appellant
(Orig.Deft)

v/s

Pune Zilla Parishad
a Constituted Body working
under the Maharashtra Zilla Parishad
Act, 1961 having its office
at Pune Zilla Parishad Building
Pune-1 ... Respondent
(Orig.Plff)

Shri V.S.Gokhale for Appellant
Shri Nitin P. Deshpande for Respondent

CORAM:S.R.SATHE, J.

DATED:24th Nov. 2004

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed
by the Court of Additional District Judge, Pune in

Civil Appeal No.167 of 1989 whereby, the judgment and order passed by the Court of the Joint Civil Judge, J.D., Pune in Regular Civil Suit No.228 of 1985 decreeing the plaintiff's suit for possession was confirmed and the appeal was dismissed, the original defendant tenant has preferred this second appeal. For the sake of convenience hereafter the parties shall be referred to as the plaintiff and defendant.

2. Brief facts giving rise to this appeal are as under :

. The property bearing C.T.S.No.434A, 435, 436 situated at Pune city, was initially let out to the defendant. The shop premises no.10 measuring 750 sq.ft. was in possession of the defendant as monthly tenant at monthly rent of Rs.150/-. In the year 1984 due to increase in the work load of the plaintiff, plaintiff was in need of the suit premises for their own purpose and as such on 31-7-1984 plaintiff - Zilla Parishad issued notice to the defendant and terminated his tenancy and called upon the defendant to hand over the possession. In spite of receipt of notice, the defendant did not hand over the possession. On the contrary, the defendant subsequently made some payment. Plaintiff accepted the said payment as damages and then again on 28-6-1985 the plaintiff

Zilla Parishad issued second notice and called upon the defendant to hand over the possession, hence plaintiff Zilla Parishad filed suit for possession against the defendant in the court of Joint Civil Judge, J.D., Pune.

3. The defendant filed his written statement at exh.13 and opposed the suit claim on several grounds. Firstly, defendant contended that description of the suit property given by the plaintiff was not correct. Secondly, they contended that M/s Lodha and Company was the partnership firm and the said partnership had taken out the suit premises on lease and as such the suit notice issued by the plaintiff was not legal and correct. The defendant also contended that Mohanlal Lodha was neither the proprietor nor the partner of Laddha and co. and as such the suit was not maintainable. The defendant further contended that even after issuance of the notice dated 21-7-1984 the plaintiff accepted rent of Rs.1800/- and as such there was fresh agreement to lease and hence the suit was not maintainable.

4. On these pleadings the trial Court framed issues at Exh.14. After considering the evidence adduced by both the parties, the trial Court came to the conclusion that the notice issued to the defendant was legal and correct and defendant's tenancy was

rightly terminated and subsequent acceptance of amount of rs.1800/- was not towards rent. The trial Court, therefore, decreed the suit in plaintiff's favour and directed the defendant to hand over the possession.

5. Being aggrieved by the above mentioned order the defendant tenant filed Civil Appeal No.167 of 1989 in the District Court, Pune. After considering the arguments advanced by both the parties, the Additional District Judge, Pune came to the conclusion that suit notice was legal and valid and plaintiff was entitled to recover the possession. He therefore dismissed the appeal.

6. The above mentioned order, passed by the first appellate court, has been challenged in this second appeal. From perusal of the record, it appears that at the time of admission this court has passed the following order :

Admit on ground Nos.1 and 2 which are substantial questions of law.

. From perusal of the appeal memo it appears that the grounds of appeal are A, B,C and not as 1 and 2. Accordingly the ground nos.1 and 2 read as follows:-

1. It was an error to hold that suit notice is legal and valid.

2. It ought to have been held that suit notice does not terminate the tenancy of the appellant properly and the same is bad in law.

7. In this appeal before me Shri Gokhale, learned Advocate for the defendant tenant has urged only one point. He submitted that notice issued by the plaintiff - Zilla Parishad to the defendant was not legal and valid and as such the suit was not maintainable. As against this Shri Deshpande, learned Advocate for the Respondent landlord supported the judgment and order passed by the courts below.

8. In order to find out whether the suit was legal and valid it is first necessary to find out who was the tenant of the suit premises, whether the suit property was leased out to M/s Ladda and Co. or whether it was leased out to Mohanlal Ladda, prop of M/s Ladda and Co. It is the contention of the defendant that M/s Ladda and Co. is a partnership firm. However, though such specific contention was taken by the defendant, they have not produced any documentary evidence to support the said contention. On the contrary from the initial letters also it is

very clear that suit property was not leased out to Mohanlal Ladda who was prop. of M/s Ladda and Co. So, the trial Court accepted the said evidence of the plaintiff and rightly held that suit premises were not leased out to any partnership firm as contended by the defendants. On the contrary it was leased out to Mohanlal Ladda. If we peruse the notice Exh.39 as well as subsequent notice Exh.40 we find that the said notices have been issued to Mohanlal Ladda and as such there is no substance in the argument advanced by the learned for the Appellant defendant that suit notice was not legal and valid.

9. It is true that after the issuance of the first notice dated 31-7-1984 the defendant landlord had accepted an amount of Rs.1800/-. It was tried to be argued on behalf of the defendants with the result of the subsequent acceptance of the said amount fresh lease was created. However, from the evidence on record it is very clear that when the said amount was accepted by the plaintiff it was made clear that the said amount was not accepted by way of rent but it was only accepted by way of damages. So merely because they accepted amount of Rs.1800/- it cannot be said that subsequent lease was granted in favour of the defendants. It appears that both the Courts below have elaborately considered this aspect and have rightly held that there was no fresh agreement

with regard to lease and notice issued by the landlord plaintiff was legal and correct.

10. A feeble attempt was made to show that the provisions of Bombay Rent Act were applicable to the suit premises. However, from the perusal of the judgments of both the courts below it is very clear that both the courts have taken into consideration the provisions of Sections 4 as well as 28 of Bombay Rent Act and have correctly held that provisions of Bombay Rent Act were not applicable to the suit premises and as such the notice issued by the plaintiff was legal and correct so also the suit was filed in the proper court and it was not barred by jurisdiction. Having once held that defendant was a tenant in respect of the suit premises and his tenancy has been rightly terminated and the suit was filed before the proper Court, it must be held that the judgment and order passed by the first appellate Court was legal and correct hence there is no necessity to interfere with the said finding.

11. In this view of the matter there is no substance in the appeal. The appeal is dismissed with costs and defendant is directed to hand over the possession of the suit premises by end of 31-12-2004.

(S.R.SATHE, J.)